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**IN RE THE IMPEACHMENT OF ATTORNEY GENERAL**  
**DANIEL CAMERON**

**THE IMPEACHMENT COMMITTEE'S REPORT AND**  
**RECOMMENDATION THAT NO FURTHER ACTION BE TAKEN**  
**CONCERNING THE IMPEACHMENT OF ATTORNEY GENERAL**  
**DANIEL CAMERON**

**INTRODUCTION**

The Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky appointed a committee of seven members to investigate the impeachment petitions recently filed against the Attorney General and, upon completion of its investigation, to report its findings and recommendations to the House. The members included: Rep. George Brown Jr. of the 77<sup>th</sup> District, Rep. Angie Hatton of the 94<sup>th</sup> District, Rep. Kim King of the 55<sup>th</sup> District, Rep. C. Ed Massey of the 66<sup>th</sup> District, Rep. Suzanne Miles of the 7<sup>th</sup> District, Rep. Patti Minter of the 20<sup>th</sup> District, and Rep. Jason Nemes of the 33<sup>rd</sup> District who served as Chairman. Two alternate members were also appointed; Reps. Felicia Rabourn and Buddy Wheatley of the 47<sup>th</sup> and 65<sup>th</sup> districts respectively. The Committee has met from time to time in executive session and has come to the conclusions laid out herein.

## BACKGROUND

### **A. Factual History**

On January 22, 2021, an impeachment petition was filed against Attorney General Daniel Cameron under Sections 66 and 68 of the Kentucky Constitution by three unnamed former Grand Jurors on the Grand Jury investigating the death of Breonna Taylor (hereinafter “Grand Jury”), Kevin Glogower, and Jennifer Smith.<sup>1</sup> The House, as required by statute, “refer[ed] the petition to a committee.” This Committee met to adopt rules and to organize its work related to this matter. The Committee invited the Attorney General to respond to the Petition and then invited the Petitioners to submit a reply. The Committee requested additional information and received a response from the Attorney General’s office. The matter is now ripe for a decision

### **B. Impeachment Under Section 68 of the Kentucky Constitution**

The Kentucky Constitution’s impeachment provisions closely mirror that of its federal counterpart, requiring a high bar for impeachment of a public officer—a true showing of perfidy, not a political or policy disagreement. The history of how the “high crimes and misdemeanors” language came to be adopted in the federal constitution demonstrates that the Framers intended impeachment to have a narrower scope than “maladministration” or other more similarly broad terms that had been rejected at various stages, including “neglect of duty,” “malversation,” and “corruption.”<sup>2</sup> While these words had all been considered at some point, none survived as a basis for impeachment because their subjectivity and breadth raised the specter of the Framers’ biggest fear—that impeachment would become a tool for unseating a duly-elected official based on mere policy or political disagreements with the legislature.

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<sup>1</sup> As to Article I, the Petitioners are the three unnamed Grand Jurors, Kevin Glogower, and Jennifer Smith. As to Articles 2 and 3, the Petitioner is solely Jennifer Smith.

<sup>2</sup> See Michael J. Gerhardt, *Putting the Law of Impeachment in Perspective*, 43 ST. LOUIS U. L.J. 905, 910-11 (1999).

## COMMITTEE RECOMMENDATIONS

The Petition levels three primary charges against the Attorney General. The first arises out of the Jefferson County Grand Jury investigation into the death of Breonna Taylor. The Attorney General's office served as Special Prosecutor and Petitioners take issue with statements his office made regarding that investigation. The second accuses the Attorney General of inciting insurrection at the U.S. Capitol on January 6, 2021. The third accuses the Attorney General of misusing taxpayer funds because his office filed a brief as *amicus curiae* in an appeal in another state on an issue of federalism. Even if Petitioners have met the strictures for initiating an impeachment in Kentucky under Section 68 (which this Committee finds they do not), their Petition still fails to come anywhere near the high showing required for impeachment.

### **A. Procedural Deficiencies**

The procedure for initiating an impeachment is governed by KRS 63.030. As noted in Attorney General Cameron's response brief, a valid Petition must be: (1) submitted by a "person"; (2) written; (3) signed by the person submitting it; and (4) include an affidavit that sets forth the facts that justify impeachment. Here, the Petition is signed by Kevin Glogower as "Petitioner/Affiant" on behalf of anonymous former grand jurors and Jennifer Smith, who failed to set forth supporting facts of which she had sufficient knowledge. Because the Petition fails to satisfy the requirements of KRS 63.030(1), it could be dismissed.

In addition to violating Kentucky statutory law on the procedural requirements for an impeachment Petition, the Committee should note that acting on a Petition based on anonymous allegations has troubling implications for due process. The target of an impeachment has a fundamental right to notice and an opportunity to be heard. Meaningful notice must include the identity of the accuser and the facts of which that accuser has personal knowledge. The Petition's

shortcomings are not just technical violations: they disregard the safeguards that ensure that impeachment is fair to the accused and comports with rule of law. But due to the seriousness of these allegations and because summary dismissal would likely invite a subsequent petition, thereby merely delaying resolution of this important matter, this Committee will consider each allegation.

## **B. Misrepresentations Regarding the Grand Jury Proceedings**

Petitioners take issue with statements made by the Attorney General during his September 23, 2020 press conference addressing the Grand Jury Proceedings concerning the death of Breonna Taylor. Specifically, it is alleged that the Attorney General deceived the public by stating that his team had presented “all of the information” and walked the Grand Jury through “every homicide offense.” Petitioners claim that the Grand Jury was never presented with such information; however, the Petitioners themselves have not presented this Committee with any evidence to prove the Attorney General’s supposed misrepresentations.

The Committee recognizes that the Attorney General’s special prosecutorial role in a Grand Jury proceeding is of utmost importance. The Kentucky Supreme Court has acknowledged that “deciding how to prepare and present a case in any tribunal, including a grand jury, requires the exercise of prosecutorial discretion and judgment.”<sup>3</sup> This prosecutorial discretion includes “the decision whether or not to prosecute, and what charge to file or bring before a grand jury.”<sup>4</sup>

The Committee also recognizes that the outcome of a Grand Jury proceeding also depends on the decisions of the jurors themselves. Kentucky law provides that the Grand Jury has the duty to “inquire into every offense for which any person has been held to answer and for which an indictment or information has not been filed, or *other offenses which come to their attention or of*

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<sup>3</sup> Gaither v. Justice & Pub. Safety Cabinet, 447 S.W.3d 628, 634 (Ky. 2014)

<sup>4</sup> Flynt v. Commonwealth, 105 S.W.3d 415, 424 (Ky. 2003).

*which any of them has knowledge.*<sup>5</sup> Accordingly, if the jurors wished to inquire further into charges of homicide, they had the ability to do so and the Petitioners have produced no evidence to the contrary.

The crux of the Petitioners' claim is that the Attorney General should be impeached for relaying alleged false information to the public at a voluntary press conference. Even if the Committee were to find that the Attorney General made a misstatement (which it does not), the Committee would be hard pressed to find that a public officer could be impeached for merely misstating information at a voluntary press conference, perhaps inadvertently. Surely this does not arise to the level of impeachable conduct contemplated by the Kentucky Constitution. In addition, impeachment for holding a press conference in a manner disapproved of by Petitioners would stifle the public's interest in transparency and it would discourage officials from similarly relaying information to the public. The Petitioners and others who are dissatisfied with the Attorney General's actions have other remedies at their disposal—namely the ballot box.

### **C. Inciting Insurrection at the U.S. Capitol**

Petitioners also attempt to connect the Attorney General to the January 6, 2021 insurrection at the U.S. Capitol because an organization to which he belongs and its affiliate conducted robocalls to encourage people to attend the January 6, 2021 rally. The Committee should note that many Attorneys General belong to the Republican Attorney General Association or its Democratic counterpart. The robocall encouraged people to attend a rally, not to invade the Capitol. The connection between the Attorney General and the conduct at issue—the robocall—is too tenuous to support impeachment. This count of the Petition is frivolous and thus should not be referred to the full House.

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<sup>5</sup> RCr 5.02 (emphasis added).

#### **D. Misuse of Taxpayer Funds to File an Amicus Brief**

This count is similarly specious. Petitioners complain that the Attorney General filed an *amicus curiae* brief in an appeal about the federal election in Pennsylvania. At issue was a federal constitutional provision, Article II, Section 1 that strikes the balance of federalism in national elections: state legislatures can prescribe the “time, place and manner” of elections unless Congress legislates otherwise. This provision was subject to litigation around the country concerning the past election, including in Kentucky. The Attorney General was entitled to share his views with the court in an *amicus curiae* brief. It is a commonplace thing for attorneys, including Attorneys General to file such briefs, and therefore, this count is similarly frivolous and thus should not be referred to the full House.

#### COSTS OF INVESTIGATION

KRS 63.070(1) provides in part that, upon the decision of this Committee to report against the petitioners’ petition of impeachment, and provided the Committee’s report is not overruled by the House, “the petitioner(s) shall be liable to witnesses and to the accused for the costs of investigation before the committee.” (Emphasis added). It thus appears clear from this provision that Attorney General Cameron’s costs are recoverable. Though there is no case law explicitly addressing whether “costs of investigation” includes the accused’s attorney fees, there is also no basis precluding the Committee from allowing recovery of such costs. Indeed, there is relevant legal scholarship suggesting that inclusion of such fees were precisely the intent of the Kentucky legislature in implementing KRS 63.070.<sup>6</sup>

Finally, the Committee’s own costs of investigation will be taxed to the Petitioners. Although no single statute or case exists explicitly permitting the Committee to do so, such

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<sup>6</sup> See Shawn D. Chapman, *Removing Recalcitrant County Clerks in Kentucky*, 105 Ky. L.J. 261, 284 (2016).

authority may be inferred from the Kentucky Constitution and various statutory provisions. Section 39 of the Kentucky Constitution provides that “Each House of the General Assembly may determine the rules of its proceedings.” Ky. Const. § 39. KRS 63.030(2) provides that “[t]he House shall refer the petitions to a committee, with power to send for person and papers, to report thereon.” (Emphasis added). In addition, the fact that the House is required to form a committee and compensate its members shows that the committee was meant to be compensated for its services, and as previously mentioned, these kinds of costs are precisely the disincentives intended by the Kentucky legislature in implementing KRS 63.070. The Committee will provide Petitioners with a complete bill of costs at a later time.

#### CONCLUSION

Impeachment is an important legislative tool to remove from office public officials who act with true perfidy—far outside the bounds of decency or sound government. Although the question of what actions are impeachable is exceptionally difficult to define and, by its very nature, includes the considered judgment of individual legislators, impeachment is, and must remain, a very high hurdle. Impeachment overturns the election of the accused; its abuse is itself anti-democratic. It must not be allowed to settle scores or relitigate policy disputes.

This Committee has thoroughly reviewed the petition and finds that no allegation rises to the level of impeachable conduct. This does not mean that individual members of this Committee agree with decisions made by the Attorney General. But it means that this Committee does not believe the proper response is impeachment, but rather for the legislature to enact policies to address its disagreements and for the people to weigh in by voting during the next election.

In conclusion, this Committee will recommend that the House of Representatives take no further action on the question of the impeachment of Attorney General Daniel Cameron.

Furthermore, as required by KRS 63.070, this Committee requests the Attorney General to submit a bill of costs by a week from Wednesday, February 24, 2021, which will be taxed to the Petitioners unless objected to within five business days of its submission to this Committee. If an objection is made, this Committee will consider any objections and order the Petitioners to pay a reasonable amount to the Clerk of the House of Representatives.

February 23, 2021